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T.C.A No.517 to 519 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 19-08-2024

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR
and
THE HON'BLE MR.JUSTICE C.SARAVANAN

Tax Case (Appeal) Nos.517 to 519 of 2015

M/s.Das Lagerways Wind Turbine Ltd.,
Trichy 620 014.

... Appellant in all TCAs.

-VS-

The Assistant Commissioner of Income Tax,
Company Circle-1(4),
121, Mahatma Gandhi Road,
Chennai 600 034.

.. Respondent in all TCAs.

Prayer in TCA.No.517 of 2015 : Appeals preferred under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench 'A', Madras, dated 04.02.2015 in I.T.A.No.322/Mds/2011 for the Assessment Year 1998-99.

Prayer in TCA.No.518 of 2015 : Appeals preferred under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench 'A', Madras, dated 04.02.2015 in I.T.A.No.323/Mds/2011



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for the Assessment Year 2006-07.

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Prayer in TCA.No.519 of 2015 : Appeals preferred under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench 'A', Madras, dated 04.02.2015 in I.T.A.No.324/Mds/2011 for the Assessment Year 2000-01.

For Appellant : Mr.G.Baskar
in all appeals

For Respondent : M/s.Avinash Krishnan Ravi
for Mr.T.Ravikumar
Senior Standing Counsel
(In all W.Ps.)

COMMON JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J**)

By this common order, all the four appeals are being disposed of.

2. The appellant has filed these appeals against the impugned common order(s) dated **04.02.2015** passed by the Income Tax Appellate Tribunal [Appellate Tribunal for brevity] in I.T.A.Nos. 322 to 325/Mds/2011 for the



Assessment Years 1998-99, 1999-2000, 2000-01 & 2001-02 respectively.

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3. These appeals were admitted on 12.01.2016. Following substantial questions of law were framed for being answered in these appeals:-

- "1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in upholding the orders under section 263 of the Income Tax Act dated 26.11.2010 in relation to respective assessment years passed by the Commissioner of Income Tax?
2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in upholding the orders under section 263 of the Income Tax Act dated 26.11.2010 passed by the Commissioner of Income Tax, when there is no error in the orders of re-assessment passed under section 143(3) read with section 147 of the Act dated 30.3.2006 and consequently no concurrent satisfaction of the twin statutory conditions prescribed under section 263 of the Act?
3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in upholding the orders under section 263 of the Income Tax Act dated 26.11.2010 passed by the Commissioner of Income Tax in relation to respective assessment years, when there is clear violation of the principles of natural justice?"

4. The appellant had filed a Return of Income on **30.11.1998** for the



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Assessment Year 1998-1999 and on **31.12.1998** and **30.11.2000** for the

Assessment year 1998-1999 and 1999-2000, 2000-2001 respectively.

Assessments were completed earlier for these Assessment Years are as follows:-

<i>Assessment Years</i>	<i>Date of Return of Income filed under Section 139(1) of the Income Tax Act, 1961</i>	<i>Date of Assessment Order</i>	<i>Provision under Income tax Act, 1961</i>
1998-99	30.11.1998	-	143(1)
1999-00	31.12.1998	-	143(1)
2000-01	30.11.2000	29.11.2002	143(3)

5. These assessments were followed by a survey under **Section 133A** of the Income Tax Act, 1961 on **07.02.2005**. The appellant was thus issued with notices under **Section 148** of the Income Tax Act, 1961 for these Assessment Years. The returns were scrutinized pursuant to notices issued under **Section 148** of the Income Tax Act, 1961.

6. After examining the details, the assessment was completed on



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30.03.2006 under Section 143(3) r/w 147 of the Income Tax Act, 1961

which are the subject matter of this appeals and are detailed as below :-

<i>Case No.</i>	<i>Assessment Year</i>	<i>Date of Assessment Order Section 143(3) r/w Section 147</i>
T.C.A.No.517/2015	1998-1999	30.03.2006
T.C.A.No.518/2015	1999-2000	30.03.2006
T.C.A.No.519/2015	2000-2001	30.03.2006

7. In the returns filed for the respective Assessments Years, the petitioner declared loss and therefore declared Nil Income respectively and had not claimed the benefit of Section 80-1A of the Income Tax Act, 1961. The Assessing Officer had suo motu allowed the deduction and extended the benefit of Section 80-1A to the appellant, as it stood during the material period while passing the re-assessment order on **30.03.2006**.

8. Invoking the jurisdiction under Section 263 of the Income Tax Act, 1961, the Commissioner of Income Tax issued Show Cause Notice dated **14.03.2008** for these Assessment Years 1998-99 to 2000-01.



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9. In the said notice for the first time, the department had taken the view that the Appellant was not entitled to the benefit of deduction under Section 80-IA(4A) as the petitioner has not complied with the requirements of Section 80-IA(4A) of the Income Tax Act, 1961 for the Assessment Years 1998-99 and Section 80-IA for Assessment Years 1999-00 and 2000-01.

10. The said proceedings culminated in an Order dated **28.03.2008** Section 263 of the Income Tax Act, 1961 whereby, the Commissioner of Income Tax exercised jurisdiction and had set aside the assessment orders dated **30.06.2006** passed for the Assessment years and directed the Assessing Officer to verify the claim of deduction under Section 80-IA of the Income Tax Act, 1961 and to decide the issue afresh in accordance with the provisions of the Act and Rules made thereunder.

11. The findings of the Commissioner of Income Tax vide Order dated **28.03.2008** passed under Section 263 of the Income Tax Act, 1961 is extracted below:-

<i>Assessment Year</i>	<i>Findings</i>
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1998-1999	For the reasons stated above, the assessment for Asst. Year 1998-99 is set aside with a mandate to the Assessing Officer to verify and allow the claim of deduction u/s.801A(4A) afresh in accordance with law after duly taking note of the other issues on which there was lack of application of mind.
1999-2000	The assessment for Asst. Year 1999-2000 is set aside with a direction to the Assessing Officer to verify the claim of deduction u/s.801A afresh in accordance with the provisions of the Act and rules made thereunder, during the course of which the AO would apply himself to the other features pointed out on which there was non-application of mind.
2000-01	The assessments for Asst. Year 2000-01 is set aside with a direction to the Assessing Officer to verify the claim of deduction u/s.801A afresh in accordance with the provisions of the Act and rules made thereunder, during the course of which the AO would apply himself to the other features pointed out on which there was non-application of mind.

12. The Order dated **28.03.2008** was challenged by the Appellant in **ITA.Nos.1077 to 1079/Mds/2008** before the Income Tax Appellate Tribunal. The Tribunal ultimately allowed the appeals vide its Order dated **17.12.2008** and remitted the case back to the Commissioner of Income Tax to pass a fresh Order after giving the Appellant an adequate opportunity of



being heard.

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13. In the second round, the Commissioner of Income Tax vide Order dated **26.11.2010** under Section 263 of the Income Tax Act, 1961 had once again confirmed the position in order dated 28.03.2008 passed the following orders:-

<i>Assessment Year</i>	<i>Findings</i>
1998-99	For the reasons stated above, the assessment for Asst. Year 1998-99 is set aside with a mandate to the Assessing Officer to verify and allow the claim of deduction u/s.801A(4A) afresh in accordance with law after duly taking note of the other issues on which there was lack of application of mind. The Assessing Officer is also directed to give sufficient opportunities to the assessee to put forth its contention and then decide the issue on merits.
1999-2000	The assessment for Asst. Year 1999-2000 is set aside with a direction to the Assessing Officer to verify the claim of deduction u/s 801A afresh in accordance with the provisions of the Act and rules made thereunder, during the course of which the AO would apply himself to the other features pointed out on which there was non-application of mind. The Assessing Officer is also directed to give sufficient opportunities to the assessee to put forth its



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	contention and then decide the issue on merits.
2000-01	The assessment for Asst. Year 2000-01 is set aside with a direction to the Assessing Officer to verify the claim of deduction u/s 801A afresh in accordance with the provisions of the Act and rules made thereunder, during the course of which the AO would apply himself to the other features pointed out on which there was non-application of mind. The Assessing Officer is also directed to give sufficient opportunities to the assessee to put forth its contention and then decide the issue on merits.

14. Aggrieved by the same, the appellant has preferred second round of appeals before the Tribunal in **ITANos.322 to 324 of 2011** which have culminated in the impugned Common Order dated **04.02.2015**. The Tribunal had dismissed the appeal, against two separate orders of the Commissioner of Income Tax dated **26.11.2010** and **25.10.2010** respectively under Section 263 of the Income Tax Act.

15. Although at the time of admission, these appeals were admitted and the above mentioned substantial questions of law were framed. We are of the view that the substantial questions of law that arises for consideration in these appeals is as to whether the benefit of Section 80-IA of the Income



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Tax Act, 1961 as it stood during the material period could be denied to the petitioner and whether the benefits of Section 80-IA(2)(iv)(a) can be thrust on the appellant-assessee without the appellant-assessee claiming the same.

16. The learned counsel for the appellant would submit that various additions were made in the assessment orders dated **30.03.2006**. The learned counsel for the appellant would submit that the appellant-assessee was entitled to deduction under Section 80-IA of the Income Tax Act, 1961 as it was located in an industrially backward State as is contemplated in Section 80-IA(2)(iv)(b) of the Income Tax Act, 1961.

17. The Appellate Tribunal vide impugned order has rejected the appeals of the appellant on the ground that, since the appellant did not claim deduction under Section 80-IA of the Income Tax Act, 1961, it was the duty of the Assessing Officer to apply his mind before allowing the deduction. The Tribunal further held that nowhere in the Assessment Order, the Assessing Officer has recorded the reasons for allowing the deduction when



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the assessee has also not claimed deduction under Section 80-IA of the Income Tax Act, 1961.

18. We have heard the learned counsel for the appellant and the respondents.

19. As mentioned above, for the respective Assessment Years, Assessments were completed either under Section 143(1) or under Section 143(3) of the Income Tax Act, 1961 as detailed in para 4 of this order. Thereafter, a search was conducted on 07.02.2005. Notices were issued for these Assessment Years under Section 148 of the Income Tax Act, 1961 which culminated in Assessment Order dated 30.03.2006 for the respective Assessment Years and made addition to the taxable income of the Appellant Assessee.

20. The Assessing Officer therefore allowed the benefit of Section 80-



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IA(2)(iv)(b) of the Income Tax Act, 1961 which was sought to be denied by invoking Section 263 of the Income Tax Act, 1961 on the ground that the Assessing Officer ought to have verified whether the appellant-Assessee was carrying on manufacturing activity of Wind Electric Generators in Puducherry or not and whether there was admission of Wind Farm Infrastructure receipt by Wescare India Limited.

21. Under Section 80-IA of the Income Tax Act, 1961, the benefit of deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development etc, applies to any industrial undertaking which fulfils any of the conditions namely, Condition Nos (i) to (v) of Sub-section 2 to Section 80-IA reads as follows:-

80-IA. Deduction in respect of profits and gains from industrial undertakings, etc., in certain cases.-

(1).....

(2) *This section applies to any industrial undertaking which fulfils all the following conditions, namely:-*

(i) *it is not formed by splitting up, or the*



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reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of an industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

- (ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose;*
- (iii) it manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India:*

Provided that the condition in this clause shall, in relation to a small scale industrial undertaking or an industrial undertaking referred to in sub-clause (b) of clause (iv) which begins to manufacture or produce an article or thing during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2000, apply as if the words "not being any article or thing specified in the list in the Eleventh Schedule" had been omitted;

- (iv) (a) in the case of an industrial undertaking not specified in sub-clause (b) or sub-clause (c), it begins to manufacture or produce articles or things or to operate such plant or plants, at any time during the period beginning on the 1st day*



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of April, 1991 and ending on the 31st day of March, 1995, or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking,

- (b) *in the case of an industrial undertaking located in an industrially backward State specified in the Eighth Schedule or set up in any part of India for the generation, or generation and distribution, of power, it begins to manufacture or produce articles or things or to operate its cold storage plant or plants or to generate power at any time during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2000:*

Provided that in the case of an industrial undertaking set up in any part of India for the generation, or generation and distribution, of power, the period ending shall have effect as if for the figures "1998", the figures "2003" had been substituted;

- (c) *in the case of an industrial undertaking located in such industrially backward district as the Central Government may, having regard to the pre-scribed guidelines, by notification in the Official Gazette, specify in this behalf, as an industrially backward district of Category A or an industrially backward district of Category B, and, it begins to manufacture or produce articles or things or to operate its cold storage plant or plants at any time during the period beginning on the 1st day of October, 1994, and ending on the 31st day of March, 2000;*



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- (d) *in the case of an industrial undertaking being a small scale industrial undertaking, not specified in sub-clause (b) or in sub-clause (c), it begins to manufacture or produce articles or things or to operate its cold storage plant at any time during the period beginning on the 1st day of April, 1995 and ending on the 31st day of March, 2000;*
- (v) *in a case where the industrial undertaking manufactures or produces articles or things, the undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.*

22. In this case, admittedly, the Assessment Orders clearly states that the nature of business the appellant as “Manufacturing and sale of Wind Turbine Generators”. The appellant unit was located in Puducherry which is specified in the VIII Schedule of the Act during the period in dispute in Sl.No.16 for the purpose of 80-IA(2)(iv)(b). Therefore, the Assessing Officer is not required to examine which there was admission of Wind Farm Infrastructure receipt from Wescare India Limited.

23. In our view, an Assessing Officer while completing the



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assessment was required to extend the benefit of deduction that are statutorily available to an assessee. This has been done. The Commissioner of Income Tax has not given any indication that the appellant's unit was not located in Union Territory of Pondicherry. Therefore, it cannot be said the Assessment Order dated 30.03.2006 was either erroneous or prejudicial to the interest of revenue. During the period in dispute the Appellant was otherwise indeed entitled to the benefit under Section 80-IA of the Income Tax Act, 1961 in view of Section 80-(1A)(2)(iv)(b) of the Income Tax Act, 1961, as the appellants industrial undertaking was located in an industrially backward State specified in the Eighth Schedule. The case of the appellant's unit is covered by the provisions of Section 80-(1A)(2)(iv)(b) of the Income Tax Act, 1961.

24. Thus, the benefit of Section 80-IA(2)(iv) (d) of the Income Tax Act, 1961 cannot be denied as the Appellant was otherwise entitled to deduction in terms of Section 80-IA(2) of the Income Tax Act, 1961. The benefit of Section 80-IA(4A), applies to any enterprise carrying on the business of developing, maintaining and operating any infrastructure facility



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which fulfils all the following conditions, namely:-

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- (i) the enterprise is owned by a company registered in India or by a consortium of such companies;*
- (ii) the enterprise has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for developing, maintaining and operating a new infrastructure facility subject to the condition that such infrastructure facility shall be transferred to the Central Government, State Government, local authority or such other statutory body, as the case may be, within the period stipulated in the agreement;*
- (iii) the enterprise starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995.*

25. This is not the case. In fact the Tribunal has observed that Commissioner of Income Tax has misconstrued the benefit of Section 80-IA of the Income Tax Act, 1961.

26. We are fortified by the views of the Hon'ble Supreme Court in **Goetze (India) Ltd v. Commissioner of Income-Tax** (2006) 284 ITR 323. In **Goetze**, while dealing with the question of whether an assessee could make a claim for deduction otherwise than by filing a revised return, the



Hon'ble Supreme Court while dismissing the appeal observed that the issue involved in the case does not impinge on the power of the Income Tax Appellate Tribunal under Section 254 of the Income-Tax Act, 1961.

27. Therefore, a fortiori, the powers of the High Court under Section 260A of the Income Tax Act are also not impinged. Relevant portion of the decision reads as under:-

2. The question raised in this appeal relates to whether the appellant assessee could make a claim for deduction other than by filing a revised return. The assessment year in question was 1995-96. The return was filed on November 30, 1995, by the appellant for the assessment year in question. On January 12, 1998, the appellant sought to claim a deduction by way of a letter before the Assessing Officer. The deduction was disallowed by the Assessing Officer on the ground that there was no provision under the Income-tax Act to make amendment in the return of income by modifying an application at the assessment stage without revising the return.

3. This appellant's appeal before the Commissioner of Income-tax (Appeals) was allowed. However, the order of the further appeal of the Department before the Income-tax Appellate Tribunal was allowed. The appellant has approached this court and has submitted that the Tribunal was wrong in upholding the Assessing Officer's order. He has relied upon the



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decision of this court in National Thermal Power Company Ltd. v. CIT [1998] 229 ITR 383, to contend that it was open to the assessee to raise the points of law even before the Appellate Tribunal.

*4. The decision in question is that the power of the Tribunal under section 254 of the Income-tax Act, 1961, is to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised before the Tribunal. The decision does not in any way relate to the power of the Assessing Officer to entertain a claim for deduction otherwise than by filing a revised return. In the circumstances of the case, we dismiss the civil appeal. **However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the Income-tax Appellate Tribunal under section 254 of the Income-tax Act, 1961. There shall be no order as to costs.***

28. That apart, in **Formica India Division v. CCE**, 1995 Supp (3) SCC 552, the Hon'ble Supreme Court had held that an assessee cannot be denied statutory benefits merely on technical grounds, when he is otherwise eligible. Relevant portion of the decision is as follows:-

2. The High Court, however, took note of the fact that no contention had been raised before the Tribunal that the appellants should be permitted to meet the requirements of Rule 56-A of the Central



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Excise Rules and, therefore, they cannot be permitted to avail of that benefit in a writ petition brought under Article 226 of the Constitution. That indeed was a technical view to take because if the appellants were entitled to the benefit of the Notification No. 71/71-CE dated 29-5-1971, to deny that benefit on the technical ground of non-compliance with Rule 56-A would be tantamount to permitting recovery of double duty on the intermediary product. The circumstances in which the appellants did not pay the duty on the intermediary product before putting the same to captive consumption for producing that stage, the appellants contested the correctness of the classification and had, therefore, not paid the duty on the intermediary product. When it was found that they were liable to pay duty on the intermediary product and had not paid the same, but had paid the duty on the end product, they could not ordinarily have complied with the requirements of Rule 56-A. Once the Tribunal took the view that they were liable to pay duty on the intermediary product and they would have been entitled to the benefit of the notification had they met with the requirements of Rule 56-A, the proper course was to permit them to do so rather than denying to them the benefit on the technical ground that the point of time when they could have done so had elapsed and they could not be permitted to comply with Rule 56-A after that stage had passed. We are, therefore, of the opinion that the appellants should be permitted to avail of the benefit of the notification by complying at this stage with Rule 6-A to the satisfaction of the Department.



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29. In our view, the appellant is indeed entitled to the benefit of Section 80-IA(2) of the Income Tax Act, 1961. Therefore, in our view, no useful purpose would be served by either upholding the order of the Appellate Tribunal dated 04.02.2015 in ITA.Nos.322 to 324/Nds/2011 for the Assessment years 1998-99 to 2000-01 respectively or remitting the case back once again to the AO insofar as, it seeks to uphold the order of the Commissioner of Income Tax passed under Section 263 of the Income Tax Act, 1961 dated 26.11.2010. It will be nothing but an empty formality to remit the case back to re-examine as to whether the appellant is/was entitled to the benefit of Section 80-IA(2)(iv)(b) or 80-IA(v)(a) as it stood during the material period. We therefore, answer the substantial questions of law in favour of the appellant assessee and against the respondent revenue.

30. These Tax Case Appeals are allowed with the above observations.

No costs.

(R.S.K., J.)

(C.S.N., J)

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